

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NOEL D. E. DANDY, :
Plaintiff, :
 :
v. : CA 04-449ML
 :
THE UNITED STATES OF AMERICA, :
Defendant.¹ :

REPORT AND RECOMMENDATION

David L. Martin, United States Magistrate Judge

This is a pro se action brought by Plaintiff Noel D. E. Dandy ("Plaintiff") against the United States of America ("Defendant"). Plaintiff seeks, among other relief, actual damages of "100,000,000 million dollars" Second Amendment [sic] Complaint (Document #10) ("Second Amended Complaint") at 8. The basis for his claim for damages appears to include several unrelated causes of action which span at least a ten year period. See, e.g., id. ¶¶ 1, 30-31, 49-50, 55-58, 90-91, 101.

Before the court is Plaintiff's Second Amended Complaint. As explained more fully herein, I recommend that Plaintiff's action be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) because it is frivolous and fails to state a claim upon which relief may be granted.² I also recommend that it be dismissed because

¹ Plaintiff identifies the Defendant in his caption as: "The UNITED STATES OF AMERICA aka The Federal Government, Social Security Administration, Medicare, Medicaid Health Care Financing Administration, Disability Administration, Woonsocket Housing Authority, Cumberland Housing Authority, Section (8), P.O.F. Agent or Officer, Woonsocket Building Code Inspector, United States Justice Department." Second Amendment [sic] Complaint (Document #10) ("Second Amended Complaint") at 1.

² In addition to claims against the entities identified in footnote 1 above, the Second Amended Complaint also appears to include

Plaintiff has failed to file a complaint which complies with Federal Rule of Civil Procedure 8(a).³

I. Facts and Travel

A. The Complaint

On October 15, 2004, Plaintiff filed his Complaint (Document #1) and an Application to Proceed without Prepayment of Fees and Affidavit (Document #2) ("First Application"). A hearing on the Application was held on November 2, 2004, and the court denied it without prejudice. See Order Denying without Prejudice Application to Proceed in Forma Pauperis (Document #5) ("Order dated 11/2/04"). The reasons for the denial were explained to Plaintiff at the hearing, and the court restated those reasons in a written order issued immediately after the hearing:

The Complaint is unclear. It appears to allege multiple, unrelated causes of action against fourteen defendants,^[4]

claims against the Woonsocket Police Department, various Woonsocket Police officers, Landmark Medical Center, a community mental health clinic, several doctors, two lawyers, the State of Rhode Island, one or more telephone companies, Plante's Auto Body, Cox Cable, and the Rhode Island Public Defender's Office. The court treats the allegations against this latter group of defendants as surplusage.

³ Fed. R. Civ. P. 8(a) provides in relevant part:

(a) Claims for Relief. A pleading which sets forth a claim for relief ... shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends ... (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.

⁴ Similar to the instant Second Amended Complaint, the caption of the Complaint identified the defendant as "THE UNITED STATES, aka the Federal Government, (owner^[1]s, operators of Woonsocket₁ Housing Authy.) aka Cumberland Housing Authy. aka Hud, agents, officers, section (8), Social Security Adm., (P.O.F.), Woonsocket Building Code Insp." Complaint. Also similar to the instant Second Amended Complaint, the Complaint appeared to include claims against additional defendants, namely the Woonsocket Police Department, the State of Rhode Island,

arising at various times between 1994 and 2004. The Complaint also does not contain for each cause of action against each Defendant **"(1) a short and plain statement of the grounds upon which the court's jurisdiction depends ..., (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks,"** Fed. R. Civ. P. 8(a) (bold added), as required by the Federal Rules of Civil Procedure.

Although Plaintiff has made some attempt to provide a "statement of the grounds upon which the court's jurisdiction depends," id., the result is neither short nor plain. The Complaint contains two and one half pages of statutory citations without any indication as to which cause of action the citations are alleged to be pertinent or applicable. See Complaint at 1-2

In short, the Complaint fails to give Defendants and the court fair notice of what Plaintiff's claim is and the grounds on which it rests. The Complaint therefore fails to state a claim on which relief may be granted. See 28 U.S.C. § 1915(e) (2) (B) (ii).

Order of 11/2/04 at 1-2 (original footnotes omitted).

The Order of 11/2/04 also stated that the First Application was deficient in that several questions were either not answered or not answered completely and it was not dated. See id. at 2. For these reasons, the court denied the First Application. See id. However, the court authorized Plaintiff to file within twenty-one (21) days an application which was complete and an amended complaint which complied with the Federal Rules of Civil Procedure. See id. at 3. The Order of 11/2/04 concluded by stating that the amended complaint should contain among other things:

the Landmark Medical Center, Steven Nugent, Andrew Pellitier, Gerald Brenner, Dave's Imports, Rick's Tire & Auto, Auto Zone, Glen Muccinni, Tony Tran, and the University of Massachusetts Hospital. See Complaint at 3-10. (The Complaint consists of an unnumbered cover page, eleven pages numbered 1 through 11, and an unnumbered certification page. The court cites here to the numbered pages.)

1) only one cause of action unless the cause of action arises out of the same transaction, occurrence, or series of transactions or occurrences, see Fed. R. Civ. P. 20(a);

2) only the defendants who are involved in that cause of action, i.e., that there is a question of law or fact common to all defendants which will arise in the action, see Fed. R. Civ. P. 20(a);^[5]

3) a short and plain statement of the grounds upon which the court's jurisdiction depends, see Fed. R. Civ. P. 8(a);

4) a short and plain statement of the claim showing that the Plaintiff is entitled to relief, see Fed. R. Civ. P. 8(a)

Order of 11/2/04 at 3.

B. The First Amended Complaint

On November 18, 2004, Plaintiff filed another Application to Proceed without Prepayment of Fees (Document #7) ("Second Application") and another Complaint (Document #6) ("First Amended Complaint"). The court conducted a hearing on the Second Application on December 2, 2004. At the hearing and also in a written order issued that same date, the court advised Plaintiff that:

While the Second Application is complete, the First Amended Complaint still fails to give Defendant(s) and the court fair notice of what Plaintiff's claim is and

⁵ The Order set forth the relevant part of Fed. R. Civ. P. 20(a):

All persons ... may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

Order Denying without Prejudice Application to Proceed in Forma Pauperis (Document #5) ("Order of 11/2/04") at 1-2 n.2 (quoting Fed. R. Civ. P. 20).

the grounds on which it rests. Specifically, the First Amended Complaint does not contain a short and plain statement of the claim showing that Plaintiff is entitled to relief.

Order Requiring Plaintiff to File Second Amended Complaint (Document #9) ("Order of 12/2/04") at 1-2.

The court reserved ruling on the Second Application and directed Plaintiff to file within fourteen (14) days a Second Amended Complaint which complied with the Federal Rules of Civil Procedure. The written order reflecting this action contained the following footnote:

For the benefit of Plaintiff, the court here repeats (and expands somewhat) the remarks it made to Plaintiff at the December 2, 2004, hearing. The Complaint should be titled "SECOND AMENDED COMPLAINT." In the "FACTS" section, Plaintiff should proceed step by step. Each fact alleged should be numbered. For example, if Plaintiff were to plead the facts alleged in the original Complaint and the First Amended Complaint, those facts would be stated in a manner similar to that shown below:

1. On December 2, 1994, Plaintiff Noel D. E. Dandy was a tenant at 114 Bourdon Boulevard, in Woonsocket, Rhode Island.

2. The property at 114 Bourdon Boulevard was federal property.

3. On that date, Plaintiff was receiving a ride home from his friend, Tad Nickel.

4. (And so on.)^[6]

Plaintiff should set forth sufficient facts so that the basis for his claim against Defendant(s) is clear. **Plaintiff should state what Defendant(s) did (or failed to do) which allegedly makes Defendant(s) liable for the damages he is seeking.**

⁶ For this example, the court drew upon the information contained in the Complaint and the First Amended Complaint.

Order of 12/2/04 (bold added).

C. Second Amended Complaint

On December 15, 2004, Plaintiff filed his Second Amended Complaint. The court has attempted to organize the document's 113⁷ paragraphs by grouping the allegations based on the defendant against whom they appear to be directed. In some instances, the court simply quotes the paragraphs of the Second Amended Complaint which pertain to a particular defendant.⁸

1. United States of America

Paragraphs 1 through 26 seem primarily to assert a cause of action against Defendant as a result of a December 2, 1994, motor vehicle accident in which Plaintiff was injured. See Second Amended Complaint ¶¶ 1-26. The basis for this claim appears to be that the accident allegedly occurred on federal property, see id. ¶ 2, and that it happened because "[t]he property was too narrow for all traffic," id. ¶ 11.

2. Social Security Administration

Paragraph 58 states:

On September 6, 2003 - December 6, 2004 the Social Security Administration violated my Civil Rights, refused me information , on my children stop my checks/coverage .

Id. ¶ 58.

3. Medicare/Medicaid

⁷ The Second Amended Complaint has two paragraphs which are designated ¶ 68, two paragraphs designated ¶ 72, and two paragraphs designated ¶ 110.

⁸ Plaintiff uses a nonstandard form of capitalization, spacing, abbreviation, punctuation, and spelling. Where the court is confident that it understands Plaintiff's meaning, it has corrected his nonstandard form without so indicating. In instances where the court is uncertain as to Plaintiff's intended meaning, it has reproduced Plaintiff's words and spacing exactly as they appear in the Second Amended Complaint.

Paragraphs ¶¶ 49-50 state:

(49). Plaintiff claims medicare/medicaid has refused / to pay for my medical care / medication unless I sign a agreement allowing medicaid to receive payments from "progressive ins. co." on 9-6-2003 civil rights violations .

(50). There is much "controversy" with Medicare/ Medicaid.

Second Amended Complaint ¶¶ 49-50.

4. Department of Justice

In ¶¶ 90-91 Plaintiff states that on June 7, 2004, he sent a complaint to the United States Department of Justice and that he has yet to receive a reply. See id. ¶¶ 90-91. It is unclear to what Plaintiff's complaint is related.

5. Woonsocket Housing Authority

Paragraphs 55-56 state:

(55). On August 15, 2002 I was denied section (8) in Cumberland / Woonsocket Civil rights /"Controversy".

(56). Based on false statements made by Woonsocket Housing.

Id. ¶¶ 55-56.

6. Woonsocket Building Code Inspector

Paragraph 57 states:

On May 23, 2001 , May 16, 2002 The City of Woonsocket Building code inspector Thomas S. Koback Jr. violated my civil rights / put my family in danger .

Id. ¶ 57.

7. Landmark, NRICMH, and Various Doctors

Paragraphs 27 through 42 concern the treatment which Plaintiff received at Landmark Medical Center ("Landmark") and from various doctors between December 3, 1994, and sometime in 1996. Plaintiff charges that Landmark treated him "poorly [and]

purposely denied him his right to compensation," id. ¶ 36, and also denied him his medical records and his x-rays, see id. ¶ 42. He asserts that the doctors committed medical malpractice. See Second Amended Complaint ¶ 37.

Plaintiff claims in ¶¶ 45-47 that a "Controversy," id. ¶ 47, exists between himself and the "Northern R.I. Community of Mental Health [NRICMH]," id. ¶ 45, over his treatment and medical records, see id. ¶ 47. Although it is not entirely clear, the controversy appears to relate to a diagnosis made by NRICMH on July 31, 1997, see id. ¶ 45, and to statements made by a NRICMH case worker prior to that date, see id. ¶ 46.

In ¶¶ 52-54 Plaintiff states that on September 11, 1997, he was sued by an attorney representing Dr. Francis A. Ramella, that Dr. Ramella failed to diagnose a skull fracture and brain damage, see id. ¶ 53, and that "[t]he money was taken out of my bank account before the trial without my permission by the Judge in state court," id. ¶ 54.

Paragraph 68⁹ states:

(68). On 12-6-94 Radiology Associates , inc. violated my civil rights / failed to do a act .

Id. ¶ 68.

Paragraphs 73 through 87 appear to relate to treatment which Plaintiff received at Landmark and from various doctors in Woonsocket and North Smithfield. See id. ¶¶ 73-87. He alleges that the doctors "have a 'problem' with people of 'color,'" id. ¶ 82, and that they "denied [him] compensation with their negative reports from Dec. 94 to June 96," id. ¶ 83. Plaintiff states that none of the doctors found "any brain damage related to this car collision." Id. ¶ 81.

Paragraphs 92-93 state:

⁹ The court refers here to the second ¶ 68. See n.7.

92). On 1-20-99 plaintiff found out he was a diabetic .

93). Plaintiff was denied an expert & was later injected with a substance , at Mariam Hospital .

Second Amended Complaint ¶¶ 92-93.

8. Attorneys

In ¶¶ 43 and 44 Plaintiff alleges that he thought that he had "obtained ... Attorney ... Steve Nuegent [sic] on 12-3-94," id. ¶ 43, and that this attorney "'failed' in representing [Plaintiff]", id. ¶ 43. In ¶ 72¹⁰ Plaintiff states that "Mr. Nugent Mis-represented & was grossly negligent/ & guilty of legal mal-practice in representing the Plaintiff Dandy ." Id. ¶ 72.

Paragraph 68¹¹ states:

(68). On February 1, 2000 I was denied my records from Atty. Gerald M. Brenner he violated my civil rights .

Id. ¶ 68.

9. Woonsocket Police Department

Plaintiff appears to allege that a Woonsocket Police Officer, Todd Boisvert, denied Plaintiff medical help, see id. ¶ 22, and denied Plaintiff his civil and constitutional rights, see id. ¶ 23, apparently at the scene of the December 2, 1994, motor vehicle accident, see id. ¶ 21.

Paragraphs 48, 72,¹² and 88 state:

(48). On 3-9-98 my Civil & Constitutional rights were violated by John Scully , Bdg. 47, & 3 other Officers .

....

(72). On July 3, 2004 plaintiff was stabbed in the left

¹⁰ The court refers here to the second ¶ 72. See n.7.

¹¹ The court refers here to the first ¶ 68. See n.7.

¹² The court refers here to the first ¶ 72. See n.7.

ear , Woonsocket Police failed to investigate civil rights violations.

....

88). On 4-9-98 plaintiff Dandy states Woonsocket police officers Ron Marcos , Officer Collmatt, Cox Cable , Plante's Auto Body, John Bessett caused personal injury / civil rights violations .

Second Amended Complaint ¶¶ 48, 72, 88.

In ¶¶ 94-98, Plaintiff appears to allege that police officers, not all of whom are identified as being Woonsocket Police Officers but presumably are, violated his civil and/or constitutional rights. See id. ¶¶ 94-98. The dates of the alleged violations range from January 6, 1997, to May 29, 2002. See id. ¶¶ 92-96.¹³

Paragraph 106 states:

106) The Woonsocket Police/ Atty. General's Office has continued to defame me by stating Dandy has been found Guilty of Armed Robbery / Given 1 years probation untrue.

Id. ¶ 106.¹⁴

¹³ Paragraph 96 reads in its entirety:

On 5-29-02 John Scully W.P.D., Officer Collamat W.P.O.

Second Amended Complaint ¶ 96.

¹⁴ This allegation is followed by the concluding paragraphs of the Second Amended Complaint:

107). Civil & Constitutional rights violations .

108). Plaintiff was found not guilty of Domestic Assault & Battery.

109). Guilty of Domestic Disorderly , I appealed .

110). I was denied appeal to Superior Court , denied 7th amendment right .

10. State of Rhode Island

Paragraphs 59-60 state:

(59). On March 13, 1998 plaintiff filed a lawsuit against the Woonsocket Police Department .

(60). The State of R.I. Denied plaintiff a trial, ca.98-1226 Civil right violation(s).

Second Amended Complaint ¶ 59-60.

Paragraphs 65-67 state:

(65). On 5-3-00 plaintiff was denied a trial in state court . pc 97-4951

(66). The State of R.I. violated my civil/ constitutional rights .

(67). And joined forces with Laren Wilkens, Mark Hickey to deny plaintiff compensation .

Id. ¶¶ 65-67.

In ¶ 89 Plaintiff states that he was threatened by two state police officers on April 6, 1998, in his home on Mainville Road. See id. ¶ 89.

Paragraphs 99-100 allege that Plaintiff was denied an apartment and affordable housing based on false information from the Attorney General's Office and the Woonsocket Police Department. See id. ¶¶ 99-100.

11. Verizon, Federal Transtel, Inc., and "USB1"

Paragraphs 69 and 70 are reproduced below:

(69). On September 17, October 16, December 3, 2001 ,2002 Verizon , Federal Transtel , Inc. , & USB1 .

(70). Obtained money under false pretenses , & Claimed plaintiff was Margaret Cordova civil rights .

110). The case was sent back to Dorrance St.

Id. ¶¶ 107-110.

Id. ¶¶ 69-70.

12. Plante's Auto Body

Paragraph 71 states:

(71). On 4-9-98 to 4-15-98 Plante's Auto Body repaired my car without permission violated civil rights .

Second Amended Complaint ¶ 71.

13. Undetermined

With the possible exception of ¶ 105 which may be directed against Woonsocket Police and/or the State of Rhode Island, the court is unable to connect the following allegations to any defendant.

101). On 10-9-04 plaintiff was falsely accused of Domestic Assault & Battery .

102). plaintiff states "Controversy" with his wife of 15½ years , wants plaintiff out of the house .

103). Plaintiff was sent to the A.C.I. 4 days.

104). Plaintiff was denied his medication at this A.C.I.

105). Controversy with Officer Smith/Officer Fernades , Public Defenders office .

Id. ¶¶ 101-05.

II. Law

Plaintiff is proceeding pro se, and his Complaint is held to a less stringent standard than one drafted by a lawyer. See Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed. 652 (1972). It is to be "read ... with an extra degree of solicitude." Rodi v. Ventetuolo, 941 F.2d 22, 23 (1st Cir. 1991). The court is required to liberally construe a pro se complaint. See Strahan v. Coxe, 127 F.3d 155, 158 n.1 (1st Cir. 1997); Watson v. Caton, 984 F.2d 537, 539 (1st Cir. 1993). At the same time, a plaintiff's pro se status does not excuse him

from complying with procedural rules. See Instituto de Educacion Universal Corp. v. U.S. Dep't of Educ., 209 F.3d 18, 24 n.4 (1st Cir. 2000).

III. Discussion

A. Compliance with Prior Orders

Plaintiff's Second Amended Complaint reflects some attempt to comply with the court's Orders of 11/2/04 and 12/2/04 (most notably by numbering the paragraphs and reducing the length of his jurisdictional statement). However, as detailed below, the document repeats other serious failings which existed in Plaintiff's Complaint and First Amended Complaint and which the court specifically identified in its Orders of 11/2/04 and 12/02/04.

1. Unrelated Causes of Action

The Second Amended Complaint appears to again "allege multiple, unrelated causes of action against [numerous] defendants, arising at various times between 1994 and 2004."¹⁵ Order of 11/2/04 at 1 (original footnotes omitted). Although the court has determined that it will treat as surplusage claims involving entities or persons other than Defendant, see n.2, the presence of these claims obscures and hinders comprehension of Plaintiff's primary claim.

¹⁵ The mixing of unrelated claims is egregious. Although Plaintiff states in his initial averment that "[t]his lawsuit results from a car collision that occurred on December 2, 1994," Second Amended Complaint ¶ 1, the pleading includes many claims that are clearly unrelated to that accident, see, e.g., id. ¶ 72 (alleging that "[o]n July 3, 2004 plaintiff was stabbed in the left ear, Woonsocket Police failed to investigate civil rights violations."); id. ¶¶ 94-96 (appearing to allege that police officers violated his civil rights on January 6, 1997, March 28, 1997, and May 29, 2002); id. ¶ 98 (stating that on November 21, 1998, he was arrested in violation of his civil rights); id. ¶ 101 (stating that on October 9, 2004, he was falsely accused of domestic assault and battery).

2. Jurisdictional Statement

The Second Amended Complaint also "does not contain for each cause of action against each [d]efendant ... **a short and plain statement of the ground on which the court's jurisdiction depends**" Order of 11/2/02 at 1-2. Although Plaintiff has greatly reduced the number of statutory and constitutional citations in his jurisdictional statement (a vast improvement from the two and one half pages in the Complaint), he still does not state which citations or provisions apply to which causes of action. The court noted the absence of such specification in its Order of 11/2/04. See id. at 2. One of the primary reasons for doing so was the fact that the court was unable to discern from the Complaint any basis for the exercise jurisdiction over Plaintiff's claims for medical and legal malpractice.

3. Bases for Claims

With the possible exception of his claim against Defendant for presumably negligent design of a street (which allegedly caused the December 2, 1994, automobile collision in which Plaintiff was injured) the allegations contained in the Second Amended Complaint do give not Defendant fair notice of what Plaintiff's claims are and the grounds on which they rest. See id.; Order of 12/2/04 at 1-2 (same). Many of Plaintiff's averments are conclusory. See, e.g., Second Amended Complaint ¶¶ 48, 57, 61, 64, 66, 68, 88, 94-97. Others are incoherent. See, e.g., id. ¶¶ 54, 68-70, 92-93, 102, 105, 107-110. Although the court specifically instructed Plaintiff to state in his Second Amended Complaint "what Defendant(s) did (or failed to do) which allegedly makes Defendant(s) liable for the damages [Plaintiff] is seeking," Order of 12/2/04 at 2 n.2, Plaintiff has repeatedly

stated only conclusions,¹⁶ see Second Amended Complaint ¶¶ 57, 61, 66, 68, 88, 94-98.

B. Finding Re Second Amended Complaint

The court finds that the only claim in the Second Amended Complaint against Defendant which even arguably complies with the requirements of Fed. R. Civ. P. 8(a) is Plaintiff's claim for presumably negligent design of the street on which the December 2, 1994, motor vehicle accident occurred. See Second Amended Complaint ¶¶ 1-18, 26.

C. Statute of Limitations

Plaintiff's negligent design claim is clearly barred by the statute of limitations. See Gonzalez v. United States, 284 F.3d 281, 288 (1st Cir. 2002) ("Pursuant to the [Federal Tort Claims Act (FTCA)], a tort claim against the United States is 'forever barred' unless it is presented in writing to the appropriate federal agency within two years after the claim accrues. 28 U.S.C. § 2401(b)."); see also Pitts v. United States, 109 F.3d 832, 836 (1st Cir. 1997) ("FTCA claimants must file suit in federal court within six months of the date on which the federal agency to which the claim has been addressed mails notice of final denial of their claim. See 28 U.S.C. § 2401(b)."). Plaintiff must have been aware of the narrowness of the street at the time of the accident in 1994 or shortly thereafter. Any claim which he may have had based on the width of the street would have accrued at that time. Thus, the present action filed in 2004 is years out of time.

A complaint which states a cause of action that appears to

¹⁶ As a representative example of this failing, the court cites Plaintiff's assertion that on May 23, 2001, the Woonsocket Bulding Code Inspector violated his civil rights and put Plaintiff's family in danger. See Second Amended Complaint ¶ 57. Nowhere does Plaintiff explain what the Inspector did or failed to do which violated Plaintiff's civil rights and placed his family in danger.

have expired under the applicable statute of limitations may be dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B). See Johnson v. Rodriguez, 943 F.2d 104, 107 (1st Cir. 1991) (citing prior version of statute); Street v. Vose, 936 F.2d 38, 39 (1st Cir. 1991) (per curiam) (same). Accordingly, because any claim Plaintiff may have had against Defendant based on the December 2, 1994, accident is time barred, the Second Amended Complaint should be dismissed as frivolous under § 1915, and I so recommend.

Lastly, it is worth noting that most of the other claims in the Second Amended Complaint (which the court has already found to be either inadequately pled or directed against other defendants) appear, in any case, to be barred by the applicable statutes of limitations. Plaintiff's numerous constitutional and civil rights claims are based largely on matters occurring more than three years prior to the filing of his action. Since the statute of limitations for such actions is three years, they would seem to be time barred. See Boyd v. Rhode Island Dep't of Corr., 160 F.Supp.2d 213, 219 (D.R.I. 2001) ("In order to properly bring a 42 U.S.C. § 1983 suit, the action must be commenced within the applicable time limitations period. In actions brought under 42 U.S.C. § 1983, a state's personal injury statute governs the time limitations period. Rhode Island's general personal injury statute of limitations is three years.") (citations omitted); accord Doctor v. Wall, 143 F.Supp.2d 203, 210 (D.R.I. 2001) (holding that a three year statute of limitations applied to plaintiff's constitutional claims).¹⁷

¹⁷ Additionally, some defendants against whom Plaintiff appears to direct allegations of civil rights violations are not "state actors." See, e.g., ¶¶ 64, 68, 68, 71, 83. An action under 42 U.S.C. § 1983 for violation of civil rights requires that the action complained about must be attributable to a "state actor." Communities for Equity v. Michigan High Sch. Athletic Ass'n, 377 F.3d 504, 510 (6th Cir. 2004); Andresen v. Diorio, 349 F.3d 8, 13 (1st Cir. 2003) ("[T]he

Similarly, even if there were some basis for this court to exercise jurisdiction over Plaintiff's claims for medical and legal malpractice, it appears likely that most of those claims are barred by the three year statute of limitations applicable to those actions. See R.I. Gen. Laws § 9-1-14.1 (1997 Reenactment) (stating statute of limitations for medical malpractice actions); R.I. Gen. Laws § 9-1-14.3 (1997 Reenactment) (stating statute of limitations for legal malpractice actions).

Summary

The court has conducted two hearings and issued two written orders in an attempt to give Plaintiff the opportunity to file a complaint which complies with the Federal Rules of Civil Procedure. Despite these efforts, Plaintiff's Second Amended Complaint contains several of the deficiencies which were fatal to his earlier pleadings. It contains multiple, unrelated causes of action. It lacks a short and plain statement of the grounds on which the court's jurisdiction depends for each cause of action. Many of the allegations are incoherent or conclusory and do not give fair notice of the bases for Plaintiff's claim(s). The only claim pled which arguably satisfies the requirements of Fed. R. Civ. P. 8(a), namely that against Defendant arising out of the December 2, 1994, motor vehicle accident, is time barred. Therefore, the Second Amended Complaint fails to state a claim upon which relief may be granted, and it should be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

Conclusion

section 1983 remedy is available against state actors or others acting under color of state law."); DeBauche v. Trani, 191 F.3d 499, 506 (4th Cir. 1999) ("To implicate 42 U.S.C. § 1983, conduct must be fairly attributable to the State. The person charged must either be a state actor or have a sufficiently close relationship with state actors such that a court would conclude that the non-state actor is engaged in the state's actions.") (internal quotation marks and citations omitted).

For the reasons stated above, I recommend that the Second Amended Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) because it is frivolous. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt.¹⁸ See Fed. R. Civ. P. 72(b); D.R.I. Local R. 32. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

David L. Martin
United States Magistrate Judge
December 28, 2004

¹⁸ Plaintiff is advised that if he wishes to object to the recommendation for dismissal he must do so in writing within ten (10) days. Plaintiff should state clearly the basis for his objection (s).